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Snell Island SNF LLC d/b/a Shore Acres Rehabilitation and Nursing Center, LLC, and HGOP, LLC d/b/a Cambridge Quality Care, LLC, and United Food and Commercial Workers Union, Local 1625. Case 12–CA–25854 and 12–RC–9281

August 27, 2010

DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND BECKER

On July 18, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding. which is reported at 352 NLRB No. 106. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Second Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2009, the court enforced the Board's Decision and Order. Snell Island SNF v. NLRB, 568 F.3d 410 (2d Cir. 2009). On June 17, 2010, the United States Supreme Court issued its decision in New Process Steel, L.P. v. NLRB, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. On June 28, 2010, the Supreme Court granted the petition for certiorari, vacated the underlying judgment, and remanded the case to the court of appeals. Thereafter, the court of appeals remanded this case to the Board for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.²

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's July 18, 2008 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceeding. The prior proceeding, however, was also a two-member decision and we do not give it preclusive effect.

We have also considered the postelection representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and brief, and has adopted the Regional Director's findings and recommendations to the extent and for the reasons stated in the March 13, 2008 Decision and Certification of Representative, which is incorporated herein by reference.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers Union, Local 1625, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time and PRN Certified Nursing Assistants, restorative aides, staffing coordinators, ward clerks, central supply clerks, cooks, dietary aides, housekeeping assistants, laundry aides, maintenance assistants, activity assistants and receptionists employed by the joint Employers at Shore Acres Rehabilitation and Nursing Center facility located at 4500 Indianapolis Street NE, St. Petersburg, Florida, excluding all other employees, including MDS Coordinator, registered nurses, licensed practical nurses, therapists, managerial employees, guards and supervisors as defined in the Act.

Notice to Show Cause

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

- 1. The Acting General Counsel is granted leave to amend the complaint on or before September 6, 2010, to conform with the current state of the evidence;
- 2. The Respondent's answer to the amended complaint is due on or before September 20, 2010; and

² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case prior to the issuance of this decision.

3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before October 12, 2010 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the Acting General Counsel's Motion for Summary Judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. August 27, 2010.

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member
Craig Becker,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD